

STATE OF MICHIGAN  
COURT OF APPEALS

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BORU, INC., d/b/a DEARBORN GRILL,

Plaintiff-Appellant,

v

COMERICA BANK,

Defendant-Appellee.

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UNPUBLISHED  
February 24, 2005

No. 251862  
Wayne Circuit Court  
LC No. 02-238943-CZ

Before: Fort Hood, P.J., and Griffin and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(4). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, plaintiff argues that the trial court erred in dismissing its complaint because plaintiff submitted sufficient proof to meet the circuit court's jurisdictional requirements. We disagree.

"Whether a trial court has subject-matter jurisdiction is a question of law that this Court reviews de novo." *Etefia v Credit Technologies, Inc.*, 245 Mich App 466, 472; 628 NW2d 577 (2001). "This Court reviews de novo a trial court's grant or denial of summary disposition. When reviewing a motion for summary disposition under MCR 2.116(C)(4), we must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law, or whether the affidavits and other proofs show that there was no genuine issue of material fact." *Service Employees Intern Union Local 466M v City of Saginaw*, 263 Mich App 656, 660; 689 NW2d 521 (2004) (citation omitted).

Jurisdiction of the subject matter is the right of the court to exercise judicial power over a class of cases, not the particular case before it; to exercise the abstract power to try a case of the kind or character of the one pending. The question of jurisdiction does not depend on the truth or falsity of the charge, but upon its nature: it is determinable on the commencement, not at the conclusion, of the inquiry. Jurisdiction always depends on the allegations and never upon the facts. [*Ryan v Ryan*, 260 Mich App 315, 331; 677 NW2d 899 (2004), quoting *Altman v Nelson*, 197 Mich App 467, 472; 495 NW2d 826 (1992).]

“Circuit courts are courts of general jurisdiction, and have original jurisdiction over all civil claims and remedies ‘except where exclusive jurisdiction is given by the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state.’” *Farmers Ins Exchange v South Lyon Community Schools*, 237 Mich App 235, 241; 602 NW2d 588 (1999), quoting MCL 600.605. “However, MCL 600.8301 provides district courts with exclusive jurisdiction over civil claims when the amount in controversy does not exceed \$25,000.” *Etefia*, *supra* at 473.

In this case, even if defendant were liable for all the damages that plaintiff claims, the amount in controversy would still not meet the jurisdictional amount. First, plaintiff claims that it incurred a \$30 NSF fee for each of forty-eight checks that defendant wrongfully dishonored, totaling \$1,440. Second, plaintiff claims it paid \$1,500 to cover the NSF fees incurred by the recipients of these forty-eight checks. Third, plaintiff claims that Feala was forced to take out a \$10,000 loan on his personal credit card to cover the wrongfully dishonored checks, charging four to five percent interest to plaintiff. However, the \$10,000 loan itself is not included in the calculation of damages because it was taken out on Feala’s personal credit card and is not a debt charged to plaintiff. Plaintiff only incurred the interest charges on this loan.<sup>1</sup> Fourth, even at \$33 per hour, the 150 hours Feala alleges he spent “straightening out this matter” would only amount to \$4,950. The total of all these damages only comes to approximately \$8,400, far less than the jurisdictional requirement for the circuit court.

Plaintiff also claims lost profits resulting from the departure of an employee who allegedly “had a large following.” Plaintiff maintains that these lost profits alone amount to at least \$25,000. Plaintiff, however, never provided any evidence of how these lost profits were calculated. The only support for plaintiff’s claim is Feala’s bare assertion in his affidavit that this employee’s departure “caused the corporation to lose at least \$25,000 in *business*.” (Emphasis added.) Feala’s affidavit does not even mention profits. Thus, regardless of whether it is considered damages for lost business or lost profits, plaintiff has failed to provide any basis for determining how these damages were calculated. “A party asserting a claim has the burden of proving its damages with reasonable certainty,” and “damages based on speculation are not recoverable.” *Berrios v Miles, Inc*, 226 Mich App 470, 478; 574 NW2d 677 (1997). Because plaintiff never put forth any evidence that it ever made a profit, let alone how it could calculate lost future profits resulting from one employee’s departure, its claim of lost profits purportedly resulting from the employee’s departure is merely speculative and, therefore, is not viable. The trial court correctly determined that plaintiff did not allege sufficient damages to exceed the \$25,000 jurisdictional threshold for the circuit court.

Affirmed.

/s/ Karen M. Fort Hood  
/s/ Richard Allen Griffin  
/s/ Pat M. Donofrio

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<sup>1</sup> Even if this \$10,000 is included in plaintiff’s damages, the total is still well below the jurisdictional amount required in the circuit court.